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Attorneys for Creditor
TRINITY FINANCIAL SERVICES, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re,

CARLOS GALVAN MARTINEZ,

Debtor,

Case No. 2:17-bk-21970-VZ

Chapter Number: 13

**REPLY IN SUPPORT OF SECURED
CREDITOR TRINITY FINANCIAL
SERVICES, LLC'S MOTION TO DISMISS
CHAPTER 13 BANKRUPTCY CASE**

Date: January 7, 2019
Time: 10:30 a.m.
Dept: 1368

TRINITY FINANCIAL SERVICES, LLC. ("Trinity") hereby replies (the "Reply") in support of its Motion to Dismiss Chapter 13 Case [Docket No. 46] (the "Motion") in the above-referenced matter. This Reply is based on the authorities cited herein and on such additional submissions and argument as may be presented at or before the confirmation hearing. In support of its Reply, Trinity respectfully states as follows:

I. ARGUMENT

A. The Debtor Has Failed to Address the Arguments for Dismissal

1. The Debtor's Opposition [Docket No. 52] to the Motion argues that the Debtor has filed an amended plan providing for Trinity. However, Debtor's counsel also admits in the Opposition that the Debtor stipulated at the beginning of October that Trinity's lien was actually

1 secured. *Id.* The Debtor has not made any payments to Trinity on its secured lien in the three
2 months since that time. *See* concurrently filed *Declaration of D.A. Madden*. Consistent with this,
3 the Debtor has also failed to file any declarations attesting to post-petition payments being made
4 on his second lien with Trinity.

5 2. Trinity's counsel emailed Debtor's counsel in December 2018 requesting that the
6 Debtor become current. *See* concurrently filed *Declaration of Rafael R. Garcia-Salgado*. As of
7 January 2, 2019, counsel for Trinity has not received any indication that the Debtor has made any
8 post-petition payments to Trinity. *Id.*

9 3. The Debtor's inability to pay secured claims is cause for dismissal under 11 U.S.C.
10 § 1307(c)(4), as further elaborated upon in the Motion. Motion at 7. Though Trinity's lien was
11 determined to be secured three months ago, the Debtor has not seen fit to make any payments on
12 his secured second lien. Accordingly, this case should be dismissed.

13 **B. The Amended Schedules and Plan Fail to Rebut the Grounds for Dismissal**

14 4. In connection with his Opposition, the Debtor filed amended schedules as Docket
15 No. 52-1, attesting under penalty of perjury that the Debtor purportedly now had monthly net
16 income of \$1,301. This amount is the same as the plan payment in the Debtor's latest amended
17 plan, Docket No. 39.

18 5. The new schedules do not remedy Trinity's grounds for dismissal because *the*
19 *Debtor failed to schedule any regular monthly payment on his second lien*. The Debtor only
20 scheduled his regular payment to his first lien. Accordingly, the Debtor's monthly net income is
21 \$424.24 less than the actual net income required to service the secured debts listed in the Debtor's
22 latest plan. \$424.24 is the amount of the Debtor's regular monthly payment on his second lien.

23 6. The Debtor also filed as Docket No. 52-1 proof of the Debtor's payments to the
24 trustee under the old plan amount, in the form of a screen capture. However, the Debtor filed no
25 proof of his November or December 2018 payments to the trustee in the larger amount called for
26 by his latest plan: \$1,301.00. As a result, the Debtor has failed to rebut any grounds for
27 dismissal—his old plan payment amounts were superseded by the determination in Trinity's favor
28 of the Debtor's lien strip motion in October 2018.

1 **C. The Debtor Has Failed to Prove Business and Rental Income**

2 7. The Debtor's Second Amended Schedule I now lists his monthly income in the
3 amount of \$2,582.00 [Docket No. 44]. This is an \$882 increase over his income as previously
4 scheduled throughout the life of this case. However, the Debtor failed to provide proof of income
5 to Trinity's counsel when asked in December 2018. *See* concurrently filed *Declaration of Rafael*
6 *R. Garcia-Salgado*. The Debtor has also historically failed to prove income, as indicated in the
7 Trustee's objection to the Debtor's previous plan [Docket No. 20].

8 8. The Debtor's Opposition includes a Residential Rental Agreement with an
9 attached "Notice to Change Terms of Tenancy" [Docket No. 52-1]. The notice indicates that the
10 Debtor's tenant has only renewed his lease, so the rental agreement is not new income for the
11 Debtor. Additionally, the Debtor has not provided a declaration of the tenant confirming his
12 willingness and ability to contribute to the Debtor's Chapter 13 plan, indicating the length of his
13 residency at the subject property, or indicating how long he will be able to continue to pay rent.
14 The Debtor also fails to provide any proof of income for his tenant.

15 9. Lastly, the Debtor filed bank statements for his business [Docket No. 52-2].
16 However, the statements are for the months of August 2018, September 2018, and October 2018
17 only, rather than the three most recent months. Additionally, it is clear from just the three (3)
18 monthly statements provided that the Debtor's monthly income fluctuates and the Debtor does not
19 receive a steady and reliable amount of income. For example, the September 2018 statement
20 reflects deposits totaling only \$1,700.00, which is significantly less than the monthly income
21 listed on the Debtor's Amended Schedule I. Accordingly, the Debtor's Opposition fails to rebut
22 the grounds for the Motion, and this case should be dismissed.

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1 **II. CONCLUSION.**

2 For the foregoing reasons, Trinity submits that the Motion should be granted.

3
4 Dated: January 2, 2019

BURKE, WILLIAMS & SORENSEN, LLP

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6 By: 

7 Richard J. Reynolds
8 Rafael R. Garcia-Salgado
9 Attorneys for Creditor
10 TRINITY FINANCIAL SERVICES, LLC
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TRINITY FINANCIAL SERVICES, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re,
CARLOS GALVAN MARTINEZ,
Debtor,

Case No. 2:17-bk-21970-VZ

Chapter Number: 13

**DECLARATION OF DON A. MADDEN, III
IN SUPPORT OF REPLY IN SUPPORT OF
SECURED CREDITOR TRINITY
FINANCIAL SERVICES, LLC'S MOTION
TO DISMISS CHAPTER 13
BANKRUPTCY CASE**

Date: January 7, 2019
Time: 10:30 a.m.
Dept: 1368

I, DON A. MADDEN, III, declare as follows:

1. The following are facts known to me, and I have first-hand knowledge of the same, or are matters of which the Court may take judicial notice. If called as a witness, I could and would competently testify thereto under oath. I am the President of Movant TRINITY FINANCIAL SERVICES, LLC ("Trinity"), and I am authorized to make this Declaration. This Declaration is provided in support of Trinity's *Reply in Support of Motion to Dismiss Chapter 13 Bankruptcy Case* (the "Motion") filed contemporaneously herewith.

2. Trinity is a Wyoming Limited Liability Company active in good standing in

1 Wyoming since February 25, 2014. Trinity has been active and in good standing in California
2 since February 11, 2015.

3 3. Because of my training, management, and work experience at Trinity, I am
4 personally familiar with Trinity's policies, procedures, and practices concerning the purchase of
5 second trust deeds and notes, the servicing of those loans, engaging in loss mitigation of those
6 loans before starting foreclosure proceedings, and performing foreclosures on second deeds of
7 trust in default. I am also personally familiar with the types or kinds of records prepared by
8 Trinity or its agents in the regular course of purchasing second trust deeds and notes, servicing of
9 those loans, engaging in loss mitigation of those loans before starting foreclosure proceedings,
10 and performing foreclosures on second deeds of trust in default. I am also personally familiar
11 with how those records are prepared, and the information and methods of preparation of those
12 records. Therefore, I act as Custodian of Records for Trinity. The exhibits attached to Trinity's
13 Proof of Claim No. 2-1 that are taken from the business records of Trinity were made at or near
14 the time of filing by or from information transmitted by someone with knowledge, the records
15 are kept in the course of regularly conducted activity of Trinity's business, and keeping such
16 records is and was a regular practice of Trinity.

17 4. Trinity is the holder of the promissory note between Debtor Carlos Galvan
18 Martinez, as borrower (the "Debtor"), and National City Bank, as the original lender, dated
19 August 6, 2007 (the "Note"), having purchased it.

20 5. Trinity has physical possession of the original Note.

21 6. Trinity is the holder of a second priority Deed of Trust (the "Deed of Trust")
22 securing the Note and encumbering the real property located at 4628 and 4628 ½ St. Elmo Dr.,
23 Los Angeles, CA 90019 (the "Property"). The legal description for the Property is set forth in
24 the Deed of Trust. The Deed of Trust was recorded against the Property on August 14, 2007, as
25 Document No. 20071903303 in the official records of the Los Angeles County Recorder. I
26 request that the Court take judicial notice of this document pursuant to Fed. R. Evid. 201.

27 7. I have many years of experience working in the lending industry in California and
28 elsewhere within the United States. I have extensive experience with the documentation process

1 for loans secured by real property in California. I also have extensive experience with purchasing
2 loans secured by real property in California and with the documents utilized to effect the transfer
3 of the loans.

4 8. As of the Debtor's petition date of September 29, 2017, the Debtor had defaulted
5 in his pre-petition payments with respect to the Note. The Debtor has made no payments on the
6 Note since November 2008.

7 9. As of the date of this declaration, Trinity has not received any post-petition
8 payments from the Debtor with respect to the Note.

9 10. Trinity has never sent any type of notification to the Debtor to indicate that the
10 Note had been forgiven or paid off.

11 I declare under the penalty of perjury under the law of the United States of America that
12 the foregoing is true and correct.

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14 Executed this 2nd day of January, 2019, at Newport Beach, California.

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18 Don A. Madden, III
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Attorneys for Creditor
TRINITY FINANCIAL SERVICES, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re,
CARLOS GALVAN MARTINEZ,
Debtor,

Case No. 2:17-bk-21970-VZ

Chapter Number: 13

DECLARATION OF RAFAEL R. GARCIA-SALGADO IN SUPPORT OF SECURED CREDITOR TRINITY FINANCIAL SERVICES, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS CHAPTER 13 CASE

Date: January 7, 2019
Time: 10:30 a.m.
Dept: 1368

I, RAFAEL R. GARCIA-SALGADO, declare:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California, as well as the state's federal district and bankruptcy courts.

2. I am an associate in the law firm of Burke, Williams & Sorensen, LLP ("Burke"), counsel for Creditor Trinity Financial Services, LLC ("Trinity"). I have personal knowledge of the following facts and statements in this declaration, unless otherwise stated, and if called upon to testify, I could and would testify competently thereto. This declaration is submitted in support of Trinity's *Motion to Dismiss Chapter 13 Bankruptcy Case* (the "Motion").

3. On December 26, 2018, I contacted Debtor's counsel Raymond Perez via email to

1 request proof of income for the Debtor's increased income as listed in the Debtor's Amended
2 Schedule I [Docket No. 44] and Opposition to the Motion [Docket No. 52-1]. To date, counsel
3 has not provided a response to my inquiries. A true and correct copy of the email communication
4 is attached hereto as **Exhibit 1**.

5 4. Additionally, on December 28, 2018, I contacted Debtor's counsel via email to
6 request a copy of the tracking information for the November 2018 and December 2018 post-
7 petition payments. To date, counsel has not responded to my request, either by email or by filing
8 anything in this case. Nor has Trinity received the November 2018, December 2018, and January
9 2019 post-petition payments. A true and correct copy of the December 28, 2018 email
10 communication is attached hereto as **Exhibit 2**.

11
12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this 2nd day of January, 2019 at Santa Ana, California.


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Exhibit 1

From: Garcia-Salgado, Rafael R.
Sent: Wednesday, December 26, 2018 1:25 PM
To: 'Raymond Perez'
Subject: RE: Carlos Martinez and Trinity
Importance: High

Do you have any proof of income for the increased income you indicated in the latest schedules, filed as Docket 44?
What is the source of this income? Thanks.

Rafael R. Garcia-Salgado | Associate
1851 East First Street, Suite 1550 | Santa Ana, CA 92705-4067
d - 949.265.3413 | t - 949.863.3363 | f - 949.863.3350
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Exhibit 2

From: Garcia-Salgado, Rafael R.
Sent: Friday, December 28, 2018 1:06 PM
To: 'Raymond Perez'
Subject: RE: Carlos Martinez and Trinity

Use tracking on the payments and we'll continue or call off the hearing.

Rafael R. Garcia-Salgado | Associate

1851 East First Street, Suite 1550 | Santa Ana, CA 92705-4067
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From: Raymond Perez [<mailto:rperezlaw.ela@gmail.com>]
Sent: Friday, December 28, 2018 1:04 PM
To: Garcia-Salgado, Rafael R.
Subject: Re: Carlos Martinez and Trinity

okay, thank you

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Main Document Page 14 of 16

Raymond Perez, Esq.

329 N. Rowan Ave.

Los Angeles, CA 90063

(323) 264-2753

(323) 264-2785 Fax

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **1851 East First Street, Suite 1550, Santa Ana, CA 92705-4067**

A true and correct copy of the foregoing document entitled (*specify*): **REPLY IN SUPPORT OF SECURED CREDITOR TRINITY FINANCIAL SERVICES, LLC'S AMENDED MOTION TO DISMISS CHAPTER 13 BANKRUPTCY CASE AND DECLARATION IN SUPPORT OF MOTION TO DISMISS CHAPTER 13 BANKRUPTCY CASE AND DECLARATION IN SUPPORT OF REPLY IN SUPPORT OF SECURED CREDITOR TRINITY FINANCIAL SERVICES, LLC'S AMENDED MOTION TO DISMISS CHAPTER 13 BANKRUPTCY CASE**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **1/2/19**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Nancy K Curry (TR) TrusteeECFMail@gmail.com
- Sean C Ferry sferry@ecf.courtdrive.com, bkyecf@rasflaw.com
- Rafael R Garcia-Salgado rgarcia@bwsllaw.com, bantle@bwsllaw.com, rjr-nef@bwsllaw.com, jgomez@bwsllaw.com
- Raymond Perez rperezlaw.ela@gmail.com
- Richard J Reynolds rreynolds@bwsllaw.com, psoeffner@bwsllaw.com, tmims@bwsllaw.com, rjr-nef@bwsllaw.com, fcabezas@bwsllaw.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) **1/2/19**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor:

Carlos Galvan Martinez
4628 1/2 St. Elmo Dr.
Los Angeles, CA 90019

Judge:

Honorable Vincent P. Zurzolo
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and
Courthouse
255 E. Temple Street, Suite 1360
Los Angeles, CA 90012

☐ Service information continued on attached page

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**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE
TRANSMISSION OR EMAIL** (state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued
on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 2, 2019 Bernadette C. Antle
Date *Printed Name*


Signature